

1 Third-Party Defendant COR Clearing, LLC ("COR") respectfully moves the Court to
2 extend the following deadlines in the current Stipulated Discovery Plan and Scheduling Order
3 Submitted in Compliance with LR 26-1(e) (the "Current Scheduling Order"), Doc. No. 245, by
4 60 days as they concern the third-party claims against it: (a) the discovery cut-off deadline; (b)
5 the expert disclosure deadline; and (c) the dispositive motion deadline. Specifically, COR
6 requests the Court to move these deadlines as follows:

7 (a) Extend the discovery cut-off for third-party claims from September 19, 2014 to
8 November 19, 2014;

9 (b) Extend the third-party claim expert disclosure deadlines from October 3, 2014 to
10 November 3, 2014 for initial expert disclosures and from November 3, 2014 to December 3,
11 2014 for rebuttal expert disclosures.

12 (c) Extend the third-party claim dispositive motion deadline to either thirty days
13 after the cut-off date for third-party discovery (December 19, 2014) or thirty days after the
14 disclosure of rebuttal experts in the event that any third-party discloses an expert witness on or
15 before November 3, 2014.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 The grounds for this motion are as follows:

18 1. COR needs to obtain discovery from Cede & Co. ("Cede") and the Depository
19 Trust Company ("DTC") via subpoenas to defend itself against the third-party claims. This
20 discovery will involve document discovery and potentially a deposition. *See* Declaration of
21 Tepley, ¶ 3., 4.

22 2. The stay on discovery to Cede and DTC, which was previously stayed on April
23 25, 2014 pending the Court's ruling on Cede and DTC's motion to dismiss, *see* Doc. 205 at 1,
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1 was dissolved less than a week ago on September 15, 2014 when the District Court granted
2 Cede and DTC's motion to dismiss, *see* Doc. 255.

3 3. COR recently learned that it will likely need to subpoena and depose a former
4 employee who is a key witness concerning the third-party claims and who, until recently, had
5 been actively cooperating with COR on its defense. *See* Declaration of Tepley, ¶ 5.

6 4. The only other parties to the third-party claims – Elena and Michael Sammons –
7 will not be prejudiced by the 60-day extension that COR seeks. The Sammons' third-party
8 claims against COR are contingent upon China Energy Corporation ("CEC") prevailing on its
9 first claim for relief against the Sammons. That claim seeks a declaration that the defendants,
10 including the Sammons, failed to comply with Nevada's requirements for exercising dissenters
11 rights. *See* Doc. 2-1 at ¶¶ 25-41. In their third-party claims, the Sammons seek a declaratory
12 judgment against COR asking the Court to declare that, *if* the Sammons failed to perfect their
13 right to judicial appraisal of 650,000 CEC shares, the failure was caused by COR's (1) breach of
14 contract; (2) breach of fiduciary duty; and/or (3) negligence. *See* Doc. 128 at ¶¶ 41-42. Michael
15 Sammons recently filed a notice of appeal seeking review of the Court's Order denying his
16 motion for leave to intervene as a party concerning China Energy Corporation's ("CEC's")
17 claims relating to the 650,000 shares of CEC held by the Elena Sammons R/O IRA. *See* Doc.
18 257. The Ninth Circuit has set the deadline for Michael Sammons's opening brief in that appeal
19 for December 24, 2014, and the deadline for the appellee's brief for January 23, 2015. *See* Doc.
20 262. The Sammons will not be prejudiced if the Court extends the third-party deadlines by 60-
21 days as COR requests because Michael Sammons has filed a notice of appeal relating to CEC's
22 claim upon which the Sammons' third-party claims are contingent. In addition, the Sammons
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1 only just this week filed a conditional Motion for Leave to File a "Second Amended Third Party
2 Complaint." *See* Doc. 263.

3 **CONCLUSION**

4 For the reasons stated herein, COR's request to the deadlines for fact discovery, expert
5 disclosures, and dispositive motions for the third-party claims by sixty days is due to be granted.

6 Respectfully submitted this the 19th day of September, 2014.

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14 By: /s/ Peter J. Tepley
15 Peter J. Tepley

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18 *LLC*

CERTIFICATE OF SERVICE

I, Peter J. Tepley, certify that on September 19, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the electronic mail notice list.

A copy was also served by First Class U.S. Mail, postage prepaid on the following individuals:

Elena Sammons
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Randy Dock Floyd
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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed September 19, 2014, at Birmingham, Alabama.

By: /s/ Peter J. Tepley
Peter J. Tepley